

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

ELBRUS TRANSPORTATION, INC.

and

Case No. 29-CA-27343

DARRYL STEVENS, JR., An Individual

Marcia Adams, Esq., Brooklyn, NY,
for the General Counsel.
Arkady Ashujov, President, for the Respondent.

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge. Based on a charge and a first amended charge filed by Darryl Stevens, Jr., an individual, on December 27, 2005 and February 16, 2006, respectively, a complaint was issued against Elbrus Transportation, Inc. (Respondent) on February 21, 2006. On April 11, 2006, a hearing was held before me in Brooklyn, New York.

The complaint alleges that the Respondent (a) impliedly threatened its employees with unspecified reprisals and with the loss of their jobs if they selected Local 803, International Brotherhood of Teamsters (Union) as their bargaining representative and (b) told Stevens that he was being discharged, and discharged him because of his support for or activities in behalf of the Union.

An answer was received from Ashujov acting as *pro-se* representative of the Respondent, in which he denied the complaint allegation that Stevens was discharged because of his support for the Union, and asserted that he fired Stevens for cause. The other allegations of the complaint were undenied. At hearing, counsel for the General Counsel moved for partial summary judgment of all allegations of the complaint except the allegation concerning Stevens' discharge. Although the answer responded only to that allegation, I granted the motion as to all allegations of the complaint except those which asserted that the Respondent impliedly threatened employees, told Stevens that he was discharged because of his support for the Union, and discharged Stevens unlawfully. I did so because Ashujov is a *pro-se* Respondent and because the alleged threats and comment to Stevens were related to his discharge.¹

On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed by the General Counsel and the Respondent's re-submission of its answer to the complaint, I make the following:

¹ See *Calyer Architectural Woodworking Corp.*, 338 NLRB 315 (2002); *Harborview Electric Construction Co.*, 315 NLRB 301(1994).

Findings of Fact

I. Jurisdiction

5 The complaint alleges and I find that the Respondent, a domestic corporation having its
office and place of business at 103 50th Street, Brooklyn, New York, has been engaged in the
operation of an ambulette service. During the past year, the Respondent purchased and
received at its Brooklyn, New York facility, goods and materials valued in excess of \$50,000
10 directly from points outside New York State. I accordingly find that the Respondent has been an
employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. I also
find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Facts

1. The Organizational Campaign

20 The Respondent operates an ambulette service in which its ambulettes pick up patients
at their homes, transport them to physicians' offices or to Methodist Hospital (Methodist) its
main customer, and then return them to their residences. It employed about 20 drivers including
Stevens.

25 Union organizer Kevin Walker first met with Stevens at Methodist in early October, 2005.
He asked Stevens if he was a member of a union and Stevens said that he was not. Walker
gave Stevens booklets which explained the benefits of union membership and asked him to
distribute them to his co-workers. Stevens did so, and obtained their agreement to support
union organization. He then told Walker that the employees were interested in joining the Union.

30 On October 12, 2005, Walker met Stevens at Methodist and gave him 20 union
authorization cards and asked him to have his co-workers sign the cards. Stevens signed a card
at that time, and then solicited his fellow workers at Methodist, obtaining 16 or 17 signed cards.
Stevens gave the signed cards to Walker at Methodist.

35 In November or December, Walker suggested that the employees meet at the Union
office and asked Stevens to contact the employees. Stevens spoke to his co-workers and
arranged the day and time of the meeting.

40 On December 12, 2005, the Union filed a petition to represent the Respondent's
employees. On December 22, the parties signed a Stipulated Election Agreement. On January
12, 2006, the Union won an election by a vote of 9 to 4, and on January 24, 2006, the Union
was certified in a unit of drivers, helpers and dispatchers.

2. The Employment and Discharge of Stevens

45 Stevens became employed by the Respondent in May, 1999 and worked as a driver. He
apparently worked without incident or complaint until May, 2005, when he was discharged for
being involved in an accident with his ambulette. He obtained a job with another company, but
50 was unhappy there and after one month asked Arkady Ashujov, the co-owner and president of

the Respondent, for reinstatement. Ashujov replied that the decision was up to manager Samuel Mesidor.² Three days later, Mesidor called Stevens and told him to report to work.

Ashujov and Mesidor testified that Stevens was placed on probation upon his return but Stevens denied being told that any conditions were placed on his return to work, and stated that his working conditions and terms of employment were the same as those he enjoyed prior to his discharge.

Mesidor testified that Stevens was offered a position as a dispatcher in early November, 2005 which was a promotion from his job as driver.³ Mesidor stated that Stevens worked as a dispatcher for about one week but did not like the position and returned to driving. Mesidor stated that while Stevens worked as a dispatcher he had access to the Respondent's files which contained employee signatures. He implied that Stevens forged employee signatures on the Union's authorization cards and delivered them to the Union.

As set forth above, on December 12, the Union filed a petition for representation with the Board. Stevens testified that at about that time, two weeks before his discharge on December 23, 2005, Ashujov approached him and told him that he "better not hear anything about a union coming in otherwise I would have to pay." Stevens did not respond.

Stevens testified that thereafter, on December 23, he told Ashujov that he would be going on vacation after the Christmas holiday, and asked for his regular paycheck and a check for his vacation. Ashujov told him that he would not pay him for vacation. Stevens then asked Mesidor why he would not receive a vacation check. Mesidor replied that Stevens should not return to work after his vacation. Stevens asked for an explanation, and Mesidor answered that Ashujov said so. Stevens then asked Ashujov why he could not return to work after his vacation, and Ashujov replied "because you are bringing a union in and you are trying to fuck me." Stevens left.

B. The Respondent's Evidence

1. The Discharge of Stevens

Ashujov stated that immediately prior to becoming a co-owner of the Respondent in 2004, he learned that Stevens was in an accident and the prior owner wanted to fire him. Ashujov insisted that he be retained as Ashujov needed "experienced drivers." However, he was not satisfied with Stevens' performance thereafter. Ashujov testified that at some point he saw Stevens sitting in his vehicle, eating. He called Mesidor and asked if Stevens was at lunch. Mesidor replied that he should be on the road.

² I find that Mesidor is a supervisor and agent within the meaning of Section 2(11) of the Act. As the Respondent's manager he was in charge of the employees, deciding whether to discharge them, reinstate them and excuse them from work. He was the Respondent's sole representative in its dealings with the Board and signed the Stipulated Election Agreement in its behalf. I also take administrative notice of *Elbrus Transportation, Inc.*, Case No. 29-CA-27566, JD(NY)-25-06 (May 30, 2006), in which no answer was filed to the complaint allegation that Mesidor was a manager and agent of the Respondent, acting in its behalf. That allegation was therefore deemed admitted.

³ In contrast, Ashujov first testified that he offered Stevens a dispatcher's job in May, then stated that the offer was made in late December, but then denied that he worked as a dispatcher.

In addition, Stevens often returned his vehicle to the garage for alleged needed repairs and then had lunch with Mesidor. Ashujov believed that his vehicle did not need any repairs although he conceded that many of the vehicles were not in good operating condition. Ashujov
 5 stated that Stevens engaged in such conduct perhaps once or twice per week which he believed was excessive, and then stated that Stevens returned to the garage for alleged repairs only three times between May and December, 2005. Ashujov testified that he discharged Stevens for such conduct in May, 2005, but also inconsistently stated that he could not
 10 discharge Stevens for such conduct since manager Mesidor is responsible for making such a decision. When Stevens asked to be reinstated, Ashujov refused but said that Mesidor should make the decision, and that Mesidor reinstated him but placed him on probation.⁴ Mesidor testified that he decided to reinstate Stevens.

In contrast, Mesidor testified that Stevens occasionally came to the office because, due
 15 to a knee injury he was physically unable to transport wheelchair patients who had to be carried. On those occasions, Stevens called him and explained that he could not perform such work and Mesidor would "go with it," thereby excusing him from such duties. Mesidor noted that Stevens did not come to the garage claiming a problem with his vehicle, but that he came "for his own
 20 personal problem." Mesidor added that "there's a lot of things that we let go" because the Respondent respected its drivers.

Ashujov testified that on December 22, he visited Methodist and upon exiting saw the Respondent's vehicle in front of the hospital with its engine running. He called Mesidor and asked for the identity of the driver of that vehicle. Mesidor told him it was Stevens. Ashujov
 25 looked for Stevens and found him near the bathroom speaking with his friend. Ashujov asked him why he left the vehicle running with its key in the ignition.

According to Ashujov, Stevens replied "so, you [are] going outside, right? Well, shut off the vehicle for me." Ashujov's answer to the complaint quoted Stevens as replying "why don't
 30 you do it yourself" and further said "I thought him to be very disrespectful with me and irresponsible. So I fired him." Ashujov then called Mesidor and told him to have Stevens return to the office immediately because he wanted to fire him because he left the engine running and he embarrassed him in front of other people by telling him to shut the engine for him.

Later, when Ashujov and Stevens were at the office, Stevens asked Ashujov why he was
 35 directed to return to the office. Ashujov stated that he told Stevens that he "disrespected" him in front of others at Methodist. Stevens said that he simply asked him to shut the vehicle for him. Ashujov replied why should he have to shut the engine for him, and told him that he was fired.

Ashujov testified that a law prohibits vehicles standing near the hospital with their
 40 engines running, and that Stevens broke that law and also was not respectful to him. However, Ashujov testified that the issue was not Stevens' disrespect toward him, but it was his concern that someone could steal the running vehicle. In contrast, Mesidor testified that Stevens was not discharged for not shutting his vehicle's engine. Rather, he was fired for being disrespectful
 45 toward Ashujov, and *refusing* to shut the engine.

⁴ It should be noted that Ashujov claimed that he fired Stevens for such reasons and not for
 50 an accident with his vehicle, as testified by Stevens.

Ashujov denied telling Stevens that he was required to shut his vehicle when he left it,⁵ but he believes that he gave such an instruction to all drivers at employee meetings. Mesidor also stated that a sign in front of Methodist advised drivers not to leave their vehicles' engines running.

Stevens testified that Methodist has a designated area in which ambulettes park. He denied being told of, or being aware of a rule requiring that the vehicle's engine be shut when he leaves it to escort a patient into the hospital. His practice had been to leave the engine running when he left the vehicle. He admitted that sometime before his discharge, but not on the day he was fired or the day before, he met Ashujov as Stevens was entering the bathroom at Methodist. Ashujov asked him if he left the engine running, and Stevens answered that he did, and then asked Ashujov if he was going outside. Ashujov said he was, and Stevens asked him whether he could shut the engine and leave the key under the seat. Stevens denied telling Ashujov "why don't you do it yourself?" Stevens stated that he continued to work that day until 6:00 p.m., and was not called back to the office before the end of the work day, and was not discharged that day. Stevens denied being told by Ashujov that he should not have left the engine running, and also denied that he had been disrespectful toward him.

2. Ashujov's Knowledge of the Union and his Knowledge of Stevens' Union Activities

Mesidor testified that he had sole contact with the Union and the Board agent. He signed the Stipulated Election Agreement, and stated that Ashujov had no knowledge of the Union's attempt to organize the employees or Stevens' interest in or activity in behalf of the Union. However, Ashujov's answer to the complaint stated that Stevens' discharge "had nothing to do with the union as it took more than one driver to get the union."

Ashujov denied knowing anything about the Union or its organization of the Respondent's employees. He stated that the first time he became aware that the Union was organizing his shop was nearly three weeks after the discharge when a Board agent arrived to conduct the election on January 12, 2006. Ashujov testified that he asked Mesidor what was happening. Mesidor replied that an election was being conducted. Ashujov asked what kind of election, and Mesidor answered "it is the union, Darryl Stevens called the people."

Ashujov denied making the threats testified to by Stevens, and also denied caring about whether the employees joined the Union. Both Ashujov and Mesidor stated that they believed that union organization was a matter between the employees and the Union. Mesidor therefore did not involve Ashujov with the details of the Union's campaign or the election.

Mesidor stated, however, that the Respondent's employees were represented by a union in the past which had a contract with the Respondent. That contract expired about one year before the current organizing drive and that union apparently abandoned its representation of the employees. Mesidor stated that "all that time when me and him talk about the union he still kept thinking about the previous union... and that was a whole different story from what he was thinking about and that day when [the election was conducted] that's when he knows that this is a whole different from ... the union before, that it was a whole different union."

⁵ In answering the General Counsel's questions as to whether he ever told Stevens not to leave the engine running, Ashujov's answers were unresponsive.

Analysis and Discussion

In order to prove a violation of Section 8(a)(3), the General Counsel must show that union activity was a substantial motivating factor in the employer's adverse personnel decision. To establish discriminatory motivation, the General Counsel must show union or protected concerted activity, employer knowledge of that activity, animus or hostility towards that activity, and an adverse personnel action caused by such animus or hostility. *Wright Line*, 251 NLRB 1083 (1980). Inferences of knowledge, animus, and discriminatory motivation may be drawn from circumstantial evidence as well as from direct evidence. *Flowers Baking Co.*, 240 NLRB 870, 871 (1979); *Washington Nursing Home*, 321 NLRB 366, 375 (1996). Evidence of suspicious timing and false reasons given in defense support such inferences. *Washington Nursing Home*, above. "The Board has not hesitated to infer an employer's knowledge of employees' protected activities where the circumstances reasonably warrant such a finding." *Matthews Industries*, 312 NLRB 75, 76 (1993); *Dr. Frederick Davidowitz, D.D.S.*, 277 NLRB 1046 (1985).

Knowledge need not be established directly, however, but may rest on circumstantial evidence from which a reasonable inference of knowledge may be drawn.... The Board has inferred knowledge based on such circumstantial evidence as: (1) the timing of the allegedly discriminatory action (2) the respondent's general knowledge of union activities (3) animus and (4) disparate treatment. *Montgomery Ward & Co.*, 316 NLRB 1248, 1253 (1995).

The Board has also inferred knowledge where the reasons for the discipline are baseless, unreasonable or contrived so as to raise a presumption of wrongful motive, or where the "weakness of an employer's reasons for adverse personnel action can be a factor raising a suspicion of unlawful motivation." *Montgomery Ward*, above, at 1253.

First, it is clear that Stevens engaged in activities in behalf of the Union. He was the sole contact between the Union and the employees. Stevens solicited employees, obtained 16 or 17 signed authorization cards from his co-workers, and arranged a meeting with the employees and Union representatives. At the election, Mesidor identified Stevens to Ashujov as the person who "called the people." Although the election took place after Stevens' discharge, it is clear that supervisor Mesidor was aware before that time that Stevens was solely responsible for bringing in the Union. Thus, as set forth above, Mesidor believed that when Stevens worked as a dispatcher he used the employee personnel files to forge employee signatures on the authorization cards.

Animus is clearly present in Stevens' testimony that Ashujov told him at about the time the petition was filed, that he "better not hear anything about a union coming in otherwise I would have to pay," and on the day of his discharge, Ashujov told him that he was fired because he was "bringing a union in and you are trying to fuck me." I credit Stevens' testimony which was consistent and forthright. On the other hand, for the reasons set forth below, I cannot credit the testimony of Mesidor or Ashujov where it conflicts with that of Stevens. The Respondent violated Section 8(a)(1) of the Act by threatening Stevens with unspecified reprisals and by telling him that he was being fired because he brought in a union. *Waste Stream Management*, 315 NLRB 1088, 1132 (1994).

The timing of Stevens' discharge creates a permissible inference that he was fired because of his union activities. The Union filed its petition on December 12, at about which time

Stevens was threatened with discharge as set forth above. The parties signed a Stipulated Election Agreement on December 22. Stevens was fired either that day or the following day. As set forth above, by the time of Stevens' discharge, Mesidor believed that he had used the Respondent's files to provide the Union with the names and signatures of employees.

5

Once the General Counsel has made an initial showing of discrimination, the burden of persuasion shifts to the employer to prove that it would have taken the same action even if the employee had not engaged in protected activity. *Wright Line*, above.

10

A question arises as to whether Mesidor's knowledge of his belief that Stevens acted in behalf of the Union may be imputed to the Respondent. The Respondent's main assertion is that Ashujov had no knowledge of Stevens' union activities, and indeed no knowledge that the Union was attempting to organize its employees. Mesidor confirmed that he never told Ashujov about these matters. As set forth above, manager and supervisor Mesidor testified that he alone handled the Respondent's relations with the Board in signing the Stipulated Election Agreement and arranging for a room in which the election would be conducted.

15

20

I must first make a credibility determination as to whether to credit Mesidor's denial that he told Ashujov of the Union organizing campaign or Stevens' union activity. *Dr. Philip Megdal, D.D.S., Inc.*, 267 NLRB 82, 90 (1983). I must also determine whether knowledge by Ashujov may properly be inferred from all the circumstances surrounding his discharge. *Aero Ambulance Service*, 327 NLRB 639 fn. 1, 649 fn. 1, 649 (1999); *Dr. Frederick Davidowitz, D.D.S.*, 277 NLRB 1046 (1985).

25

There is no direct evidence that Ashujov was aware of Stevens' union activities or that the Union was organizing the facility. I do not credit Mesidor's testimony that he did not inform Ashujov of the Union's organizing drive or Stevens' assistance to it. First, it is clear that manager Mesidor knew of the Union's organizing drive and knew or believed that Stevens was assisting it at the time of his discharge. It is implausible that Mesidor would not inform Ashujov of this important development in the Respondent's business life. Mesidor's testimony in this respect is harmed by his exaggeration of Stevens' wrongdoing. He stated that Stevens refused to shut the engine of his vehicle whereas Ashujov testified that Stevens simply asked him to shut the engine if he was leaving the hospital. Mesidor's credibility is further harmed by his unsubstantiated claim that Stevens forged the signatures on the Union's authorization cards.

30

35

40

In addition, as set forth above, Mesidor stated that he spoke with Ashujov about the new union's campaign, but that Ashujov believed that he was referring to the old union. Thus, although Ashujov may have been mistaken as to which union Mesidor was referring to, it is clear that he was being told that a union was now in the picture. I accordingly find that Ashujov was aware of the Union's organizing drive prior to Stevens' discharge.

45

Ashujov's testimony lacks credibility in that it is inconsistent with that of Mesidor's. Ashujov testified variously that he offered Stevens a dispatcher's job in May, in late December, and then denied that he worked as a dispatcher at all, whereas Mesidor stated that Stevens tried out the dispatcher's position for about one week in early November. I credit Mesidor's testimony since the November date coincides with Stevens' alleged access to employee names and signatures referred to in Mesidor's testimony. Ashujov also first testified that he did not put Stevens on probation, but then testified that he did.

50

Further, the answer to the complaint, signed by Ashujov, denied that Stevens' discharge was related to the Union since "it took more than one driver to get the union." Thus, the answer does not assert that he knew nothing about the Union or Stevens' activities in its behalf, the

basis of its defense at hearing. Moreover, it reveals that Ashujov knew more about the principle of concerted activity than he was willing to admit. Ashujov's acknowledgement that it took more than one driver to get the union implies that he was aware that Stevens and at least one other driver were involved in the Union's campaign.

5

In addition, the timing of the discharge lends support to a finding that Ashujov was aware of Stevens' union activities. Thus, the Union filed its petition on December 12 at about the time that Stevens was threatened by Ashujov with discharge for bringing in the Union. Further, the parties signed a Stipulated Election Agreement on December 22, and Stevens was fired either that day or the following day. *Davidowitz*, above.

10

I have also considered the fact that a union had represented the employees of the Respondent, and that therefore it would be less likely to bear animus toward an employee who brought in a union. However, the first union was on the scene only a short time after Ashujov became a part-owner of the Respondent and it ceased representing the employees entirely. Accordingly, it cannot be said that Ashujov would believe that a new union would have no impact on his business.

15

In addition, there seems to be some inconsistency in the Respondent's reasons for discharging Stevens. Its answer states that he was fired for being disrespectful and irresponsible by leaving the engine running. At hearing, Ashujov stated that the main reason for the discharge was his leaving the engine running and not his disrespect. Mesidor, however, flatly stated that Stevens was not discharged for not shutting the engine, but he was fired for being disrespectful and *refusing* to shut the engine.

25

Further, there is no evidence that Stevens was ever told that he must shut his engine when he leaves the vehicle. There was similarly no evidence that a sign at Methodist requires that engines be shut. In addition, there was no evidence that on Stevens' last day at work he left early after being fired, as testified by Ashujov and denied by Stevens. A time card would have proven that point, assuming time card records were kept.

30

Some question is presented as to the reason for Stevens' earlier discharge in May. According to Ashujov, he was fired for an accumulation of reasons such as returning his vehicle to the garage for repairs when none were needed and then sitting with Mesidor and eating. Ashujov's testimony as to the extent of this practice varied widely. He testified variously that Stevens engaged in such conduct once or twice per week but then stated that he did so only three times in seven months before his final discharge in December, 2005. In contrast, Mesidor denied that Ashujov falsified the reasons for his return to the garage. He stated that Stevens did so for physical reasons which Mesidor excused. The above demonstrates that the Respondent's reasons even as to the Stevens' earlier discharge are confused and contradictory. Thus, I do not have confidence in its reasons for his latest discharge.

35

40

In conclusion, I find that the General Counsel has established that Ashujov knew, through supervisor Mesidor, of the Union's campaign and also knew of Stevens' activities in its behalf. Animus is well established in the threat of discharge made by Ashujov to Stevens. The timing of the discharge coming immediately after the parties signed an Election Stipulation supports a finding of a violation. The weakness of the Respondent's reason for the discharge as illustrated by the different reasons assigned to the discharge – not shutting the engine or disrespect to Ashujov, and the further attempt by Ashujov to charge him with prior misconduct while Mesidor excused and permitted such conduct all compel the conclusion that Stevens' discharge violated the Act.

45

50

I accordingly find and conclude that the Respondent has not met its obligation under *Wright Line* of proving that it would have discharged Stevens even in the absence of his union activities.

5

Conclusions of Law

1. By impliedly threatening employees with unspecified reprisals and with job loss if they selected the Union as their bargaining representative, the Respondent has violated Section 8(a)(1) of the Act.

10

2. By telling its employee that he was being discharged because of his support for or activities on behalf of the Union, the Respondent has violated Section 8(a)(1) of the Act.

Remedy

15

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

20

The Respondent having discriminatorily discharged Darryl Stevens, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

25

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

30

The Respondent, Elbrus Transportation, Inc., Brooklyn, NY, its officers, agents, successors, and assigns, shall

1. Cease and desist from

35

(a) Impliedly threatening employees with unspecified reprisals and with job loss if they support or assist Local 803, International Brotherhood of Teamsters as their bargaining representative.

40

(b) Telling its employees that they were being discharged because of their support for or activities in behalf of the Union.

(c) Discharging or otherwise discriminating against any employee for supporting or assisting Local 803, International Brotherhood of Teamsters, or any other union.

45

(d) In any like or related manner interfering with, restraining, or coercing employees in

⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

50

the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

5 (a) Within 14 days from the date of this Order, offer Darryl Stevens full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

10 (b) Make Darryl Stevens whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

15 (c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify Darryl Stevens in writing that this has been done and that the discharge will not be used against him in any way.

20 (d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

25 (e) Within 14 days after service by the Region, post at its facility in Brooklyn, NY copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2002.

35 (f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

40 Dated, Washington, D.C.

Steven Davis
Administrative Law Judge

45

7 If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT impliedly threaten you with job loss if you support or assist Local 803, International Brotherhood of Teamsters as your bargaining representative.

WE WILL NOT tell you that are being discharged because of your support for or activities in behalf of the Union.

WE WILL NOT discharge or otherwise discriminate against you for supporting or assisting Local 803, International Brotherhood of Teamsters, or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of this Order, offer Darryl Stevens full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Darryl Stevens whole for any loss of earnings and other benefits suffered as a result of his discharge, less any interim earnings, plus interest.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge, and within 3 days thereafter notify Darryl Stevens in writing that this has been done and that the discharge will not be used against him in any way.

ELBRUS TRANSPORTATION, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.